Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT AINITAL.

A.O. No. 509 of 2004

U.P. State Road Transport Corporation, through its Regional Manager, Vikas Nagar Depot, Kanpur.

..... Appellant.

Versus

1. Smt. Tara Devi W/o Late Sri Ashok Kumar Saxena, R/o Type 11/9 Survey of India, Massuary District, Dehradun
2. Rajeev Kumar Saxena S/o Late Sri Ashok Kumar Saxena, R/o Type 11/9 Survey of India, Massuary District, Dehradun
3. Sanjeev Kumar Saxena S/o Late Sri Ashok Kumar Saxena, R/o Type 11/9 Survey of India, Massuary District, Dehradun
4. Km. Aarti D/o Late sri Ashok Kumar Saxena, R/o Type 11/9 Survey of India, Massuary District, Dehradun

..... Petitioners/Respondents.

Sri Ashish Joshi, learned counsel for the appellant,
Sri Kailash Tewari, learned counsel for the respondents.

Date: July 4, 2006

Hon'ble P.C. Verma,J.
Hon'ble B.S. Verma, J.

This appeal has been preferred by the Opp.party/appellant under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 10.12.2003 passed by the Motor Accident Claims Tribunal/Addl. District Judge, Dehradun in Motor Accident Claim Petition No.85 of 2003, Smt. Tara Devi & another versus Regional Manager, U.P.S.R.T.C., by which the Tribunal has allowed the claim petition filed by the petitioners for a sum of Rs.3,06,836/- alongwith interest at the rate of 6% per annum against the Opp.party /appellant.

2- Brief facts giving rise to this appeal are that on 02.07.1995, the deceased Ashok Kumar Saxena was travelling in bus No. UP 78N/0043 and was coming from Bareilly to Dehradun. At about 3.00 a.m. on 3.7.1995, as soon as the said Bus reached Shyampur P.S. Distt. Hardwar whole crossing the causeway, suddenly a heavy stream of water came from the top due to which the passengers sitting in the bus were injured and the bus met with the accident. Police divers and local citizens tried very much to trace out Sri Ashok Kumar Saxena (deceased) but the body of Sri Ashok Kumar Saxena could not be traced out. The first information of the accident was lodged in P.S. Shyampur. Sri Saxena, the deceased was working as Gardener in the C.P.W.D. Mussoorie and was getting salary Rs.3,000/- per month. The deceased was 35 years of age at the time of accident was to be retired after attaining the age of 60 years. The claimants have become helpless after the death of their husband/father and are bound to live the life of poverty. Therefore, the compensation to the tune of Rs.8,70,000/- was claimed.

3- The Opp.party-U.P.S.R.T.C. contested the claim petition before the Tribunal by filing its written statement as Paper No. 16-B. They admitted the accident of Bus in question at the said date however, it was submitted that they have no information regarding the death of the deceased. It was stated by them that their Bus No.UP 78 N-0043 which was of Kanpur Depot, was coming Dehradun on 2.7.95/3.7.95 and while causing the causeway, the bus got fell into the river and 18 alive persons and 5 dead persons were identified but the dead body of Sri Ashok Kumar could not be found. It was also alleged that they did not have any information by which it can be said that the compensation which is

being claimed for the person, he himself was travelling in that Bus. The Tribunal, on the pleadings of the parties, framed necessary issues and after recording evidence allowed the claim petition accordingly. Feeling aggrieved, the U.P.S.R.T.C. has come up in this appeal.

4- The learned counsel for the appellant contended that the compensation awarded by the Tribunal is quite excessive, exorbitant and arbitrary. We have gone through the record and perused the impugned judgment. The Tribunal while deciding issue No.1 on the basis of evidence on record held that the accident was occurred due to the negligence on the part of the driver of offending bus. Undisputedly, the deceased was employed as Gardener in the C.P.W.D. Mussoorie and he was getting salary. Paper No.19-B which is the pay slip issued by P.W.D. Dehradun is on the record of the Tribunal which shows that the deceased was getting a monthly salary of Rs.2,201/- and he was 34 years 10 months and 19 days of age and he was less than 35 years. The Tribunal on the basis of evidence on record has rightly calculated the annual income of the deceased to be Rs.26,412/- at the time of accident and after deducting one-third, the dependency loss was rightly calculated as Rs.17,608/- per annum. The multiplier of 17 has also rightly been applied. Thus, after applying the multiplier in the net annual income, the total loss of dependency comes to Rs.2,99,336/-. The Tribunal has further rightly awarded Rs.5,000/- towards loss of consortium and Rs.2,500/- towards loss of state. Accordingly, the Tribunal awarded a total sum of Rs. 3,06,836/- as compensation to the claimants.

5- We find no error or illegality in the impugned judgment. Nothing has been shown to us on behalf of the

appellant so as to warrant any interference with the findings arrived at by the learned Tribunal in the case under appeal.

6- The appeal has no force on merit and is accordingly dismissed. The impugned judgment and award is upheld. No order as to costs. The amount, if deposited in the appeal, shall be remitted to Tribunal concerned within a period of three months.

(B.S.Verma, J.) **(P.C.Verma,J.)**

Rajeev Dang